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IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S RESPONSE TO MOTION IN
LIMIT EXPERT TESTIMONY
REGARDING DNA EVIDENCE

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion to Limit Expert Testimony Regarding DNA Evidence and requests that the motion be denied. The State of Arizona's Response is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

The Defense seeks to limit the opinion testimony of the State's experts on DNA to only two options, that is, whether there is a DNA "match" or whether there is a DNA "exclusion". This is contrary to the law in the State of Arizona.

Rule 702 of the Arizona Rules of Evidence allows for testimony in the form of an opinion by experts qualified by knowledge, skill, experience, training or education "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand

1 the evidence or determine a fact in issue". Arizona has long held that even in DNA cases
2 expert opinion is admissible if that opinion is based on the expert's "own work and
3 experience and the opinions reached on that basis". State v. Hummert, 188 Ariz. 119, 127,
4 933 P. 2d 1187 (Ariz. 1997). State v. Logerquist, 196 Ariz. 470, 1 P.3d 113 (Ariz. 2000)
5 confirmed this state of the law in Arizona in clearly enunciating " that the expert could relate
6 his experience in the field to the facts and that an opinion based on his observations and
7 experience would be admissible", citing Hummert approvingly at 481. Arizona courts have
8 applied Arizona Rules of Evidence 702 and 703 to allow this opinion evidence on a lesser
9 showing of scientific certainty.

11 Arizona Constitution Article 2 Section 23 preserves the right of a trial by jury
12 inviolate. This section mandates that a jury should be the ultimate decision maker on a
13 question of fact and particularly where the minimum scientific threshold has been met.

15 It is interesting to note that the Defense cites the case of State v. Lehr, 201 Ariz. 509,
16 38 P.3d 1172 (Ariz. 2002). Lehr involved a series of rapes and murders in which the judge
17 considered the admissibility of DNA testimony. The trial judge concluded that cross-
18 examination should be limited on DNA testimony to laboratory protocols and their violation.
19 Some of the testimony that was admitted and not found to be error by the Arizona Supreme
20 Court involved witnesses testifying to "inconclusive " results, but "cannot exclude the
21 defendant as a possible donor", Lehr at 526. The convictions in which the trial court limited
22 cross-examination are the ones that were reversed because the Defense was not allowed to
23 fully test the credibility of witnesses from the DPS crime lab or present additional evidence
24 regarding their methods and conduct.
25
26

CONCLUSION

Rules 702 and 703 of the Arizona Rules of Evidence are designed to allow the jury to consider expert opinion evidence when a witness has specialized knowledge that their expert opinion will assist the trier of fact to understand the evidence or determine a fact in issue. Arizona relies upon unbridled cross-examination to test the weight and credibility of such expert opinion. The Arizona Constitution requires the jury to assess what weight should be given to such evidence, if any.

Defendant's motion should be denied.

RESPECTFULLY SUBMITTED this 25th April, 2010.

Sheila Sullivan Polk
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By: 

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COPIES of the foregoing delivered/mailed this
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